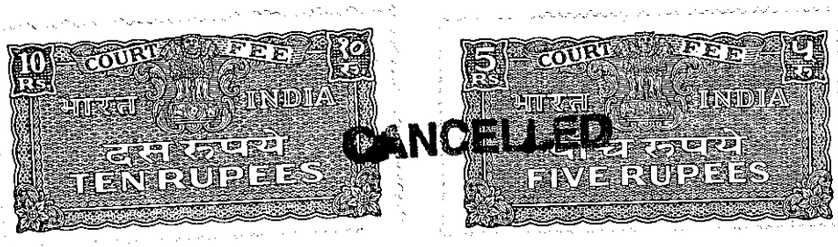
(3)



IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Appeal No. 590 /2005

APPELLANT : Gurvinder Singh Sando,
Plaintiff S/o Shri Mahendra Singh Sando,
Aged about 45 years,
R/o Civil Lines, G.E. Road, Raipur,
Tahsil & District – Raipur (C.G.)

P.R. No. 1354/05
Presented by Shri ... Advocate
dated 18-05-05

-Versus –

RESPONDENTS: 1. Shri Seerat Singh Sando.
Defendants 2. Shri Baljeet Singh Sando.
Both S/o Late Hardeep Singh Sando,
R/o Sando Ice & Cold Storage,
Purana Bus Stand, Korba,
Tahsil & District- Korba (C.G.).

APPEAL UNDER ORDER 43 RULE (r) OF THE CIVIL PROCEDURE CODE.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक M.A.NO.590/2005 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

12/05/2005

Shri Prashant Jayaswal learned Sr. Advocate with Shri Ali Asgar, counsel for the appellant.

Shri B.P. Sharma, learned counsel for the respondents.

Heard on admission and M.C.P.No.756/2005.

Appellant filed a Civil Suit for specific performance of contract and permanent injunction against the respondents in the Court of District Judge, Raipur, and along with that also filed an application for grant of temporary injunction under Order 39, Rule 1 and 2 read with Section 151 of the Code of Civil Procedure.

The case of the appellant, in brief, is that on 15/10/2004 an agreement to sell was executed by the defendants/respondents in favour of appellant for selling the land measuring 5200 sq.ft bearing plot No.17/13 situated at Civil Lines, Raipur, for a consideration of Rs.23,50,000/- after receiving an advance of Rs.1,50,000/-, but thereafter defendants/respondents refused to sell the suit land to plaintiff/appellant and instead entered into second agreement to sell the same on 23/02/2005 with Singhal Distributors Private Ltd.

Respondents/defendants denied execution of the aforesaid agreement to sell in favour of appellant/plaintiff and specifically

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

pleaded that they entered into an agreement to sell the said land for Rs.49,89,200/- with Singhal Distributors Private Ltd.

Admittedly, the title holders of the suit land are respondents/defendants and although agreement to sell as alleged by appellant/plaintiff as well as respondents/defendants has been executed, yet the possession of the suit land rests with respondents/defendants.

Learned trial Court, after hearing both the parties and taking into account the affidavits and documents filed by both the parties, held that although, prima facie, case is in favour of appellant/plaintiff, yet the balance of convenience and the principle of irreparable loss is not in his favour. Therefore, vide a reasoned order dated 06/05/2005 the application filed under Order 39, Rule 1 and 2 read with Section 151 of the C.P.C., has been dismissed. Being aggrieved with that impugned order, this appeal has been preferred.

Appellant/plaintiff contended that vide agreement to sell dated 15/10/2004 for Rs.23,50,000/-, the respondents /defendants agreed to sell 5200 sq.ft of land situated at Civil Lines, Raipur, to plaintiff/appellant and received an advance of Rs.1,50,000/- towards consideration of the same. To support the

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

said contention, it is argued that they have filed affidavit and photocopy of the said agreement in trial Court.

On the other hand, respondents contented that they have not executed any agreement to sell the suit land to appellant/plaintiff for any amount nor have received any amount from him. The cost of suit land is more than Rs.47,00,000/-, therefore, they cannot enter into such an agreement for sale the suit land for half of its value. They have entered into an agreement to sell the land to Singhal Distributors for Rs.47,89,200/- and also received an advance of Rs.4,61,000/- towards its consideration. Further, respondents contended that the plaintiff/appellant has concocted false and fabricated document to grab their valuable land. To support their contention, they have also filed affidavit and agreement to sell.

No doubt, as a result of rival contentions a serious question, whether defendants/respondents have executed any agreement to sell in favour of plaintiff/appellant or appellant/plaintiff only to grab the land concocted and fabricated the false document, has raised. Hence, a prima facie, case is there.

Suit land is in possession of the respondents/defendants. It is also undisputed that title lies with them. They have already entered into an agreement to sell the land for Rs.47,89,200/- to Singhal Distributors Private Ltd., but the plaintiff/appellant knowing this fact, has not made Singhal Distributors Pvt. Ltd., as a party in the suit. Prima facie, it appears that the proposed land

(खिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to be sold by the defendants/respondents to Singhal Distributors costs Rs.47,89,200/- whereas plaintiff/appellant wants to purchase the same only for an meager amount of Rs.23,50,000/- which is around half of its real value. Agreement to sell in favour of plaintiff/appellant is under dispute and on affidavit defendants/respondents have alleged the said document a fabricated one. Therefore, in these circumstances, learned lower Court, on sound reasoning decided the factors required for disposal of the said application in favour of respondents/defendants, has not committed any illegality or irregularity. Apparently it appears that balance of convenience as also the factor of irreparable loss lies in favour of defendants/respondents.

Appellant relied on the decision rendered by Delhi High Court in **Vijay Kumar Gupta Vs. Mahi Pal and another, reported in AIR 1987 Delhi 345,** but on the facts this case is distinguishable.

The impugned order passed by the learned District Judge, Raipur, does not call for any interference, therefore, the appeal filed by the appellant is liable to be dismissed and is accordingly dismissed. Consequently, M.C.P.No. 756/2005, I.A.Nos. 1372/2005 and 1373/2005 stand disposed of.

Sd/-
V.K. Shrivastava
Judge

Raju

देखिये)